**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**SECOND APPEAL NO.571 OF 2007**

Uttam Ankush Khandare ...Appellant

vs.

Mohol Taluka Shikshan Prasarak Mandal & Ors. ...Respondents

Mr.Uday Warunjikar for the Appellant
Mr.N.P.Shimpi for Respondent Nos.1 and 2.

**CORAM: A.S.OKA,J.**
**DATE : NOVEMBER 27,2007.**

**P.C.:**

1. Heard Advocates for the parties. The Appellant is the unsuccessful defendant who has suffered a decree for possession. The first Respondent (original first plaintiff) is an educational institution. The second respondent is the Chairman of the first Respondent and the third Respondent is the Head Master of the school conducted by the first Respondent. The Respondents filed a suit for possession by contending that the first Respondent is the allottee from the Collector of land bearing Gat No.921 more particularly described in paragraph 1 of the plaint. It is the contention of the Respondents that the Appellant was the employee of the school conducted by the first Respondent. It is stated that the suit premises standing on the suit land described in paragraph 1 of the plaint were allotted to the Appellant by way of service quarters and the Appellant was under an obligation to vacate the same on superannuation. The case of

the Respondents is that on 31st July 2001 the employment of the Appellant came to an end. As the Appellant declined to vacate, a suit for possession was filed by the Respondents.

2. The contention of the Appellant in the written statement is that the suit property was initially in occupation of the Respondents and the Respondents allotted the suit property to the Appellant for permanent residence 20 years back. It is alleged that the Appellant made a permanent structure by spending a sum of Rs.30,000/- to Rs.35,000/- with the consent of the Respondents. It is alleged that the suit property was allotted to the Appellant on ownership basis and for the last 20 years the Appellant has been in possession thereof.

3. The trial court decreed the suit. In an appeal preferred by the Appellant the decree has been confirmed. The submission of the learned Advocate for the Appellant is that even according to the case of the Respondents, the suit property was allotted to the Appellant under an agreement. He submitted that admittedly the said agreement was not produced by the Respondents and therefore, the Respondents failed to prove that the suit property was allotted to the Appellant only by virtue of his employment as a service quarter. He submitted that the averments made in the plaint indicate that the service tenancy was created in favour of the Appellant. He submitted that even going by the averments made in the

plaint, the Civil Court has no jurisdiction to entertain and try the suit in view of provisions of section 24 of the Maharashtra Rent Control Act,1999. He submitted that even according to the Respondents, the Appellant was a licensee. As a remedy is available under section 24 of the said Act of 1999, the Civil Court has no jurisdiction to entertain the suit.

4. I have considered the submissions. The Appellant has not disputed in his written statement that the Respondents had allotted the suit property to him. However, his contention is that the suit property was allotted to him on permanent basis. The fact that the Appellant was in the employment of the Respondents and that the Appellant ceased to be in employment from 31st July 2001 is not in dispute. The Appellant has not led any evidence to show that the allotment made in his favour was on permanent basis. In the circumstances, both the courts below accepted the case made out by the Respondents that the Appellant was in possession of the suit property only by of virtue of his employment and that on termination of the employment the Appellant has no right to occupy the suit property.

5. In so far as the jurisdiction is concerned, it is not the case of the Appellant in the written statement that he was a tenant in respect of the suit property. His case is of

permanent allotment. Even the Respondents have not alleged the existence of service tenancy. Therefore, there was no question of holding that the Appellant was a tenant in respect of the suit property.

6. Reliance has been placed on section 24 of the said Act of 1999 by contending that the Respondents ought to have filed the proceedings before the Competent authority. The averments made in the plaint determine the issue of jurisdiction. The term licensee has been defined under sub section 5 of section 7 of the said Act of 1999. The said definition provides as under :

(5) "Licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act,1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the

licensor or a person having any accommodation for rendering or carrying on medical or paramedical services or activities in or near a nursing home, hospital, or sanatorium or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanitarium, dharamshala, home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises, or in a place of amusement or entertaining or like institution, or in any premises belonging to or held by an employee or his spouse who on account of exigencies of service or provisions of residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increase for such premises, and any additional sum for service supplied with such premises or a person having accommodation in any premises or part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the expressions "licence", "licensor" and "premises given on licence" shall be construed accordingly;

In the present case going by the averments made in the plaint,

it is not the case of the Respondents that the licence was created for paying licence fee or charge. The said case is not at all made out by the Respondents. Under the definition of ‘Licensee" under the said Act of 1999, a licence has to be for a licence fees or charge which is not the case here. Therefore, the courts below are right in holding that the Civil Court had jurisdiction to entertain and try the suit.

7. The Appellant has not established any right to continue in possession of the suit property after his retirement. In view of the concurrent findings recorded by the courts below, no substantial question of law arises. Second Appeal is dismissed with no order as to costs.

8. Decree for possession shall not be executed for a period of six months from today subject to the condition of the Appellant and his adult family members filing usual undertaking to vacate the suit property in this court within a period of four weeks from today. If undertaking is not filed within stipulated period, decree for possession will forthwith become executable.

**JUDGE**